

REMARKS

Applicant would first like to thank the Examiner for taking the time today to discuss the patentability of the amended claims over the cited prior art (Bessler, U.S. Pat. No. 5,549,621).

Claims 53-74 are pending in the current application and have been rejected. Claims 53, 58, 59, 64, and 71 have been amended. No new matter has been added. Reconsideration is requested.

Claims 53, 55-64 and 66-70 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Bessler, U.S. Pat. No. 5,549,621. In response to the rejection, independent claim 53 has been amended to now recite a method for reducing the volume of a stomach cavity, including:

positioning a device trans-orally to a position within the stomach cavity;
acquiring tissue from the interior of the stomach cavity with the device; and
forming a pouch by securing the acquired tissue.

Support for the amendment can be found in the current application with reference to at least FIG. 13 and paragraph [0110]. Bessler discloses a laparoscopic instrument 100 for performing vertical banded gastroplasty in position relative to the stomach. Bessler does not teach or suggest placing a device trans-orally to a position within the stomach to acquire tissue from the interior of the stomach and form a pouch. Instead, Bessler teaches that two clamping bars are applied with one bar anterior and one bar posterior to the exterior of the stomach. See Bessler, col. 3, lines 8-11. Since Bessler does not disclose all of the limitations of the claim, claim 53 as amended and those claims depending therefrom are allowable over the cited art.

Independent claim 64 has also been amended to now recite "positioning a device trans-orally to a position within the stomach cavity." As discussed above, Bessler does not disclose or

suggest positioning a device trans-orally within the stomach cavity, and therefore claim 64 and those claims that depend therefrom are allowable over Bessler.

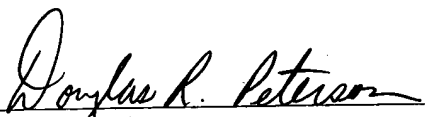
Claims 54, 65, and 71-74 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Bessler. The previous arguments are reasserted here. Claim 54 depends from claim 53, and claim 65 depends from claim 64, and both are therefore also allowable because Bessler does not disclose or suggest all of the limitations found in independent claims 53 and 64. Further, independent claim 71 has also been amended similar to the amendment made to claim 53 to now recite "positioning a device trans-orally to a position within the stomach cavity." Bessler does not disclose or suggest positioning a device trans-orally within the stomach cavity, and therefore claim 71 and those claims that depend therefrom are patentable over Bessler.

In view of the foregoing, Applicant respectfully submits that all pending claims are now in condition for allowance. Reexamination and reconsideration of the application are respectfully requested and allowance at an early date is solicited.

The Commissioner is authorized to charge deposit account no. 06-2425 for any unforeseen fees arising from the filing of this paper.

Respectfully submitted,

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